

**PLANNING COMMISSION
RESOLUTION # 2024-13**

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ANTIOCH
RECOMMENDING THAT THE CITY COUNCIL ADOPT TEXT AMENDMENTS TO
SECTION 9-5.3843 OF ARTICLE 38 (LAND USE REGULATIONS) OF CHAPTER 5
(ZONING) OF TITLE 9 (PLANNING AND ZONING) OF THE ANTIOCH MUNICIPAL
CODE RELATING TO TOBACCO AND PARAPHERNALIA RETAILERS
(LA2024-0001)**

WHEREAS, as a duly incorporated municipality under the laws of the State of California, the City of Antioch (the “City”) is empowered to protect, via its police powers, the public health, morals, and welfare; and

WHEREAS, pursuant to its police powers, the City has adopted an ordinance on August 8, 2017 imposing restrictions on certain retail activities related to tobacco and drug paraphernalia retailers (“Tobacco and Paraphernalia Retailer Restrictions Ordinance”);

WHEREAS, the Tobacco and Paraphernalia Restrictions Ordinance is codified in Antioch Municipal Code Section 9-5.3843; and

WHEREAS, the Tobacco and Paraphernalia Retailer Restrictions Ordinance prohibits, following the effective date of said ordinance, the creation or operation of a tobacco retail business or drug paraphernalia retailer business; and

WHEREAS, the Tobacco and Paraphernalia Retailer Restrictions Ordinance permits the continued operation of tobacco retailers and drug paraphernalia retailers lawfully established and operating prior to the effective date of said ordinance as non-conforming uses; and

WHEREAS, among other things, the Tobacco and Paraphernalia Retailer Restrictions Ordinance currently prohibits tobacco retailers and paraphernalia retailers operating as nonconforming uses from selling or otherwise transferring their retail business (“Transfer Restrictions”); and

WHEREAS, at its meeting of March 28, 2023, the City Council considered public comments from tobacco retailers and paraphernalia retailers regarding the impact of the Transfer Restrictions on such retailers, and directed staff to prepare an ordinance rescinding the Transfer Restrictions; and

WHEREAS, this Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) under CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that there is no possibility that the Ordinance may have a significant effect on the environment, and under CEQA Guidelines section 15064(e), which exempts purely economic regulations;

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WHEREAS, a public hearing notice was published in the East County Times and posted in three public places pursuant to California Government Code Section 65090 on September 6, 2024, for the public hearing held on September 18, 2024; and

WHEREAS, the Planning Commission held a public hearing and considered all public comments received, the presentation by City staff, the staff report, and all other pertinent documents regarding the proposed request.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission hereby makes the following finding pursuant to Section 9-5.2802(B) "Findings Required" of the Antioch Municipal Code:

Amendments to any other provisions of this chapter may be made whenever the public necessity, convenience, and general welfare require such by using the procedures set forth in this article.

The ordinance is necessary to further the public necessity, convenience, and general welfare of the City of Antioch by allowing existing legally established businesses to sell or transfer their business for continued operation in the City of Antioch.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Planning Commission of the City of Antioch hereby **RECOMMENDS** that the City Council adopt text amendments to Section 9-5.3843 of Article 38 (Land Use Regulations) of Chapter 5 (Zoning) of Title 9 (Planning and Zoning) of the Antioch Municipal Code Relating to Tobacco and Paraphernalia Retailers attached hereto as Exhibit A, to rescind the Transfer Restrictions and make certain additional clarifying changes

* * * * *

I HEREBY CERTIFY the foregoing resolution was duly adopted by the Planning Commission of the City of Antioch at a regular meeting thereof held on the 18th day of September 2024.

AYES: Commissioners Riley, Gutilla, Jones, and Martin

NOES: Commissioners Lutz, Webber

ABSENT: Commissioners Hills

ABSTAIN: None

Kevin Scudero

Kevin Scudero
Secretary to the Planning Commission

EXHIBIT A
DRAFT ORDINANCE
(SEPARATE PAGE)

ORDINANCE NO. __

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ANTIOCH, CALIFORNIA, AMENDING SECTION 9-5.3843 OF ARTICLE 38 (LAND USE REGULATIONS) OF CHAPTER 5 (ZONING) OF TITLE 9 (PLANNING AND ZONING) OF THE ANTIOCH MUNICIPAL CODE RELATING TO TOBACCO AND PARAPHERNALIA RETAILERS

WHEREAS, as a duly incorporated municipality under the laws of the State of California, the City of Antioch (the “City”) is empowered to protect, via its police powers, the public health, morals, and welfare; and

WHEREAS, pursuant to its police powers, the City has adopted an ordinance on March 8, 2022 imposing restrictions on certain retail activities related to tobacco and drug paraphernalia retailers (“Tobacco and Paraphernalia Retailer Restrictions Ordinance”);

WHEREAS, the Tobacco and Paraphernalia Restrictions Ordinance is codified in Antioch Municipal Code Section 9-5.3843; and

WHEREAS, the Tobacco and Paraphernalia Retailer Restrictions Ordinance prohibits, following the effective date of said ordinance, the creation or operation of a tobacco retail business or drug paraphernalia retailer business; and

WHEREAS, the Tobacco and Paraphernalia Retailer Restrictions Ordinance permits the continued operation of tobacco retailers and drug paraphernalia retailers lawfully established and operating prior to the effective date of said ordinance as non-conforming uses; and

WHEREAS, among other things, the Tobacco and Paraphernalia Retailer Restrictions Ordinance currently prohibits tobacco retailers and paraphernalia retailers operating as nonconforming uses from selling or otherwise transferring their retail business (“Transfer Restrictions”); and

WHEREAS, at its meeting of March 28, 2023, the City Council considered public comments from tobacco retailers and paraphernalia retailers regarding the impact of the Transfer Restrictions on such retailers, and directed staff to prepare an ordinance rescinding the Transfer Restrictions; and

WHEREAS, at its meeting of September 18, 2024 the Planning Commission of the City adopted a resolution recommending that the City Council adopt this Ordinance rescinding the Transfer Restrictions.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF ANTIOCH DOES ORDAIN AS FOLLOWS:

Section 1. INCORPORATION OF RECITALS. The foregoing recitals are true, correct, and incorporated by reference as if set forth in full herein.

Section 2. PURPOSE. The purpose of this Ordinance is to rescind the Transfer Restrictions, thereby allowing tobacco retailers and drug paraphernalia retailers to sell or otherwise transfer these businesses, subject to all other applicable laws, and to make certain additional clarifying changes to Antioch Municipal Code Section 9-5.3843.

Section 3. REPEAL AND REPLACEMENT. Title 9, Chapter 5, Article 38, Section 9-5.3843 is hereby repealed in its entirety and replaced with the following:

§ 9-5.3843 TOBACCO AND PARAPHERNALIA RETAILERS.

(A) *Definitions.* For the purposes of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

DRUG PARAPHERNALIA. Drug paraphernalia shall have that definition set forth in Cal. Health and Safety Code § 11364.5, as it may be amended.

DRUG PARAPHERNALIA RETAILER. Any establishment that sells drug paraphernalia as defined herein.

PERSON. Any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

~~— **SOLD OR TRANSFERRED.** Any assignment, delegation, designation, sale, or transfer of real property or interests in real property, including but not limited to:~~

~~— (a) A change to the name of the operator on the city business license;~~

~~— (b) A change in the leaseholder of the commercial space;~~

~~— (c) A change to the name listed on any other official government document related to the business.~~

TOBACCO PRODUCT.

(a) 1. A product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, or snuff.

2. Any device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, pipe, vaporizer pen, or hookah.

3. Any component, part, or accessory of a tobacco product, whether or not sold separately.

(b) **TOBACCO PRODUCT** does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.

TOBACCO RETAILER. Any establishment that sells tobacco products as defined herein.

(B) *Tobacco retailers prohibited.* It is unlawful for any person to cause or permit the creation of, or operation of, a tobacco retailer. The operation of a tobacco retailer shall constitute a public nuisance subject to abatement under this code.

(C) *Drug paraphernalia retailers prohibited.* It is unlawful for any person to cause or permit the creation of, or operation of, a drug paraphernalia retailer business. The operation of a drug paraphernalia retail business shall constitute a public nuisance subject to abatement under this code.

(D) *Nonconforming uses.*

(1) Tobacco retailers or drug paraphernalia retailers lawfully established and operating prior to the effective date of ~~this Ordinance 2125 C-S section~~ may continue to operate as nonconforming uses.

~~—(2) Those tobacco retailers having 20% or more of their floor area devoted to the sale or display of tobacco products or drug paraphernalia retailers are subject to the following additional provisions:~~

~~—(a) The tobacco retailer or drug paraphernalia retailer may be sold and transferred at any point prior to January 1, 2023.~~

~~—(b) From January 1, 2023 onward, the tobacco retailer or drug paraphernalia retailer may not be sold or transferred.~~

(23) All nonconforming tobacco retailers and drug paraphernalia retailers shall comply with state regulations regarding the sale of tobacco products and drug paraphernalia, as these laws may be amended from time to time.

(E) *Exceptions.*

(1) The prohibition described in division (CB) above shall not apply to the following:

(a) Any pharmacist or other authorized person who sells or furnishes drug paraphernalia upon the prescription of a physician, dentist, podiatrist, or veterinarian as permitted by law.

(b) Any physician, dentist, podiatrist, or veterinarian who furnishes or prescribes drug paraphernalia to his or her patients as permitted by law.

(c) Any manufacturer, wholesaler, or retailer licensed by the Board of Pharmacy to sell or transfer drug paraphernalia as permitted by law.

(2) The prohibitions described in division (B) and (C) above shall not apply to the following:

(ad) Any tobacco retailer or drug paraphernalia retailer operating with a valid use permit issued by the city prior to the effective date of Ordinance 2125-C-S. Consistent with Ordinance 2125-C-S, such tobacco retailer or drug paraphernalia retailer shall continue to be a nonconforming use and subject to all provisions of this section and the Municipal Code.

(32) The following business types shall be permitted to sell tobacco products subject to approval of a use permit in zoning districts where such business types are allowed under the Zoning Code:

(a) Convenience stores when ancillary to a gas station and having less than 20% of their sales area devoted to tobacco products.

1. The sale of drug paraphernalia is prohibited.

(b) Retail businesses larger than 5,000 square feet with less than 5% of their sales area devoted to tobacco products.

(e) Notwithstanding (a) or (b) above, a new use permit shall not be issued for a business that is located within 1,000 feet of any school, public park, playground, recreational center, or child care center.

Section 4. CEQA COMPLIANCE. The City Council finds that the adoption and implementation of this Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) under CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that there is no possibility that the Ordinance may have a significant effect on the environment, and under CEQA Guidelines section 15064(e), which exempts purely economic regulations.

Section 5. SEVERABILITY. Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unreasonable, or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

Section 6. PUBLICATION; EFFECTIVE DATE. This Ordinance shall take effect and be enforced within thirty (30) days from and after the date of its adoption

by the City Council at a second reading and shall be posted and published in accordance with the California Government Code.

I HEREBY CERTIFY that the foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Antioch, held on the _____, and passed and adopted at a regular meeting thereof, held on the _____, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

LAMAR A. HERNANDEZ-THORPE
MAYOR OF THE CITY OF ANTIOCH

ATTEST:

ELIZABETH HOUSEHOLDER
CITY CLERK OF THE CITY OF ANTIOCH






2024-13_Tobacco Paraphernalia Zoning Amend.

Final Audit Report

2024-09-30

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